

## Message Text

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ORIGIN STR-04

INFO OCT-01 GSA-02 ISO-00 EB-07 COME-00 DODE-00 TRSE-00

LAB-04 EUR-12 IO-10 SSO-00 NSCE-00 SS-15 NSC-05 SIL-01

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APPROVED BY: STR:MPOMERANZ

EB/OT/STA:MNAYOR

COMMERCE:KKUWABARA

DEFENSE:RBOOTEN

TREASURY:MFELDMAN

LABOR:GMOODY

GSA:PREAD

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O R 142016Z APR 75

FM SECSTATE WASHDC

TO USMISSION OECD PARIS IMMEDIATE

INFO USDEL MTN GENEVA

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UNCLAS STATE 084581

E.O. 11652: NA

TAGS: ETRD, OECD

SUBJECT: GOVERNMENT PROCUREMENT

1. MISSION DIRECTED TO PROVIDE THE FOLLOWING PAPER ENTITLED  
PROTESTS AGAINST AWARD, TO THE SECRETARIAT, IN COMPLIANCE  
WITH PARA.

I (II) OF TFD/TD 835.

2. BEGIN QUOTE: POLICIES AND PROCEDURES REGARDING PROTESTS  
AGAINST THE AWARD OF GOVERNMENT CONTRACTS ARE PRESCRIBED  
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IN THE FEDERAL PROCUREMENT REGULATIONS (SECTION 1-2.407-8)  
AND THE ARMED SERVICES PROCUREMENT REGULATION (SECTION  
2-407.8). THE TERM PROTESTS AGAINST AWARD COVERS OBJEC-  
TIONS BY A BIDDER OR OTHER INTERESTED PARTIES PRIOR TO

AWARD AND OBJECTIONS BY SUCH PARTIES AFTER THE AWARD OF A CONTRACT. THE PROCEDURES APPLY BOTH TO OPEN AND SELECTIVE TYPE PROCUREMENTS.

3. PROTESTS MAY BE FILED EITHER WITH THE CONTRACTING AGENCY OR WITH THE GENERAL ACCOUNTING OFFICE (GAO). WHERE A PROTEST IS FILED WITH A CONTRACTING AGENCY, THE PROTEST MAY BE EITHER ORAL OR IN WRITING. IF ORAL, THE CONTRACTING AGENCY MAY REQUEST THAT THE PROTEST BE CONFIRMED IN WRITING. PROTESTORS ARE ENCOURAGED TO SUBMIT THEIR PROTESTS TO THE CONTRACTING AGENCY, AND IT IS EXPECTED THAT AGENCIES WILL RESOLVE THEM AS INFORMALLY AS POSSIBLE. TIMELY ACTION IS ESSENTIAL IN ORDER TO AVOID UNDUE DELAY AND TO ASSURE FAIR TREATMENT TO THE INTERESTED PARTIES.

4. WHERE A PROTEST IS FILED WITH EITHER GAO OR WITH THE CONTRACTING AGENCY, EITHER THE CONTRACTORS OR THE BIDDERS OR OFFERORS ARE NOTIFIED THAT A PROTEST HAS BEEN FILED. INTERESTED PARTIES MAY SUBMIT COMMENTS IN CONNECTION WITH PROTESTS FILED WITH GAO.

5. HERETOFORE, PROTESTS FILED WITH AGENCIES HAVE BEEN ADMINISTERED BY CONTRACTING OFFICERS. CURRENTLY UNDER CONSIDERATION IS AN ARRANGEMENT WHEREBY AGENCIES WILL BE REQUIRED TO DESIGNATE OFFICIALS ABOVE THE CONTRACTING OFFICER TO RESOLVE PROTESTS, IN THE INTEREST OF ASSURING DETACHMENT FROM THE IMMEDIATE CONTROVERSIES.

6. AS A GENERAL RULE, AGENCIES ARE EXPECTED TO HOLD UP THE DISPOSITION OF BID PROTESTS AND CONTRACT AWARDS PENDING THE COMPLETION OF GAO OR CONTRACTING AGENCY CONSIDERATION OF PROTESTS. IN EXCEPTIONAL CIRCUMSTANCES, HOWEVER, AGENCIES MAY MAKE AWARDS PRIOR TO THE COMPLETION OF THE GAO OR AGENCY CONSIDERATION OF A PROTEST. ILLUSTRATIONS OF THE KINDS OF CIRCUMSTANCES WHICH WOULD REQUIRE AN IMMEDIATE AWARD ARE SET FORTH IN THE REGULATIONS. ALTHOUGH AN AWARD PRIOR TO THE CONCLUSION OF THE GAO CON-

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SIDERATION OF THE PROTEST MAY BE NECESSARY, INFORMAL ADVICE FROM GAO CONCERNING THE STATUS OF ITS CONSIDERATION SHOULD BE REQUESTED PRIOR TO AWARD WHEN CIRCUMSTANCES PERMIT.

7. EMLHASIS HAS BEEN PLACED IN RECENT YEARS ON THE EXPEDITIOUS HANDLING OF PROTESTS. IN THE INTEREST OF SPEEDING UP THE PROCESS, THE REGULATIONS WILL BE AMENDED IN THE NEAR FUTURE TO PRESCRIBE PROCESSING TIME OBJECTIVES. PROTESTS ON IMPROPRIETIES WHICH ARE APPARENT PRIOR TO BID OPENING WILL HAVE TO BE FILED PRIOR TO THE BID OPENING. ORAL PROTESTS AFTER BID OPENING PROBABLY WILL BE REQUIRED WITHIN 2 DAYS. WRITTEN PROTESTS IN SUP-

PORT OF ORAL PROTESTS PROBABLY WILL BE REQUIRED WITHIN 3 DAYS. INTERESTED PARTIES WILL HAVE ABOUT 5 DAYS IN WHICH TO COMMENT. APPROXIMATELY 25 DAYS WILL BE ALLOWED FOR THE RESOLUTION OF PROTESTS BY AGENCIES. IF A PROTEST WAS FILED WITH GAO, APPROXIMATELY 10 DAYS WILL BE ALLOWED FOR AGENCY RESOLUTION FOLLOWING RECEIPT OF THE GAO DECISION. IN ALL CASES, THE NUMBER OF DAYS PROVIDED INVOLVE WORKING DAYS RATHER THAN CALENDAR DAYS.

8. THE FOREGOING REMARKS APPLY EQUALLY TO BOTH OPEN AND

SELECTIVE TYPE OF PROCUREMENT, EXCEPT TO THE EXTENT THAT SOME SMALL ACCOMMODATION IS NECESSARY BY REASON OF THE DIFFERENCES IN THE METHODS OF PROCUREMENT. IN THE FINAL ANALYSIS, THE OBJECTIVE IS TO TREAT ALL BIDDERS (DOMESTIC OR FOREIGN) IN A FAIR AND EQUITABLE MANNER IN ORDER TO DISPOSE OF THE PROTEST AS EXPEDITIOUSLY AS POSSIBLE.

9. CURRENT REGULATIONS ARE BEING REVISED IN ORDER TO ASSURE EXPEDITIOUS TREATMENT OF PROTESTS BY CONTRACTING AGENCIES. RESPONSIBILITIES FOR DECISIONS MAY BE ELEVATED IN CONTRACTING AGENCIES. TO THE EXTENT PRACTICAL, AWARDS ARE TO BE WITHHELD UNTIL GAO CONSIDERATION OF A PROTEST HAS BEEN COMPLETED. HOWEVER, IF AN AWARD IS NECESSARY, THE DECISION TO MAKE AN AWARD WILL BE MADE AT AN APPROPRIATE LEVEL IN THE CONTRACTING AGENCY. THE ADOPTION OF TIME TARGETS FOR THE PROCESSING OF BID PROTESTS IS AN INNOVATION WHICH SHOULD ELIMINATE MUCH OF THE CURRENT DISSATISFACTION  
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WITH BID PROTESTS PROCEDURES.

10. SINCE 1970 THE FEDERAL COURTS HAVE BEEN AVAILABLE AS A FORUM FOR RESOLVING AWARD PROTESTS. IN CONTRAST TO THE PROCEDURE NORMALLY REQUIRED UNDER THE DISPUTES CLAUSE, NO ADMINISTRATIVE REMEDY NEED BE EXHAUSTED BEFORE A PROTEST CAN BE LODGED IN A COURT OF LAW. THE COURT MAY CONDUCT A FRESH TRIAL OF THE EVIDENCE EVEN IF THE PROTEST HAS BEEN PREVIOUSLY CONSIDERED BY ADMINISTRATIVE FORUMS. THE FEDERAL DISTRICT COURTS CAN ENJOIN AGENCY ACTION, INCLUDING STOPPING THE AWARD OR PERFORMANCE OF A CONTRACT OR DIRECT THE AWARD OF A CONTRACT TO A PARTICULAR PARTY. THE COURT OF CLAIMS DOES NOT POSSESS INJUNCTIVE POWERS, BUT IT MAY AWARD DAMAGES TO A SUCCESSFUL PROTESTOR. END OF QUOTE KISSINGER

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